

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Bair Hugger Forced Air)
Warming Devices Products) File No. 15-MD-2666
Liability Litigation) (JNE/DTS)
)
) Minneapolis, Minnesota
) May 28, 2019
) 11:30 a.m.
)
)
)

BEFORE THE HONORABLE DAVID T. SCHULTZ
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE
(STATUS CONFERENCE)

APPEARANCES

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Proceedings recorded by mechanical stenography;
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P R O C E E D I N G S

IN OPEN COURT

THE LAW CLERK: All rise.

THE COURT: Good morning. Please be seated.

All right. Good morning, everyone. I guess we're going to do these on the record. We are on the record in the Bair Hugger MDL, MDL No. 15-2666. Counsel for the plaintiff, if you would note your appearance for the record, please.

MS. ZIMMERMAN: Yes. Good morning, Your Honor. Genevieve Zimmerman for plaintiffs.

THE COURT: Good morning, Ms. Zimmerman.

And for the defendants.

MS. LEWIS: Good morning, Your Honor. Deborah Lewis for defendants.

THE COURT: Ms. Lewis.

MR. HULSE: Good morning, Your Honor. Ben Hulse.

THE COURT: Mr. Hulse.

All right. So let me begin by saying I may have misunderstood, but I was under the impression that the parties wanted to have sort of regular discovery-related kind of informal conferences, and so I thought we'd go ahead and do that, but did I misunderstand?

MS. ZIMMERMAN: No, Your Honor. Certainly from the plaintiffs' perspective we welcome the opportunity to

1 engage with the Court and try to continue to move the case
2 along, adjust things speedily.

3 MR. HULSE: Your Honor, it's not something that
4 the defendants had asked for. Our thought is it's something
5 that might be of greater utility once we have a
6 determination from Judge Ericksen. It is good to check in
7 on bucketizing certainly, but also in terms of -- you know,
8 we did reach out to plaintiffs' counsel with some
9 bucketizing issues that we wanted to potentially resolve
10 before seeing you here today. For whatever reason, we
11 didn't get a response. And no other issues have been raised
12 today, other than those that the Court put on the agenda.

13 THE COURT: Okay. Well, let's start with my
14 agenda. So on the plaintiffs' motion to strike their expert
15 reports, I'll just be up front with you. The only reason we
16 wanted to do it is -- and we were a good ways down the line
17 toward having a ruling on it when Judge Ericksen issued her
18 order on the reconsideration, and I don't know how long that
19 process will take, but if it goes into September, whatever,
20 we'll be jammed up in terms of our administrative
21 requirements. Our thought was it would be better, frankly,
22 to hold our order, to find out, because there seems to be at
23 least potential for overlap.

24 So our request was would you withdraw -- you can
25 refile it again tomorrow. It just takes it off the

1 six-month clock, is what it does.

2 MS. ZIMMERMAN: Absolutely, Your Honor. In fact,
3 my office is filing a letter today that will withdraw the
4 motion at the Court's request. If and when we get to a
5 point to rebring the motion, we'll do that.

6 THE COURT: Yeah. I've only asked one other party
7 to do this once and it made them extremely nervous, so they
8 refiled it the next day, which is fine.

9 MS. ZIMMERMAN: We won't do that.

10 THE COURT: Okay.

11 MS. ZIMMERMAN: But we will at least note in our
12 letter that we reserve the right to do so as the Court has
13 observed is our opportunity.

14 THE COURT: Okay. Second thing, I guess, on my
15 agenda was if you, Ms. Zimmerman, would remind some of the
16 plaintiffs' counsel that we actually do want them to engage
17 the meet and confer process a little bit more fully than
18 they are. It's like motions to seal; it's the last thing
19 you're all of a sudden remembering they have to do. But
20 it's best that they meet and confer in advance of the motion
21 and have an actual meet and confer.

22 MS. ZIMMERMAN: Just for my information, as I can
23 get the information out to other counsel, are they troubling
24 your chambers with questions or people are not filing the
25 meet and confer statements they should or --

1 THE COURT: No. No. What's happened we've seen
2 on a couple of situations out-of-town counsel has maybe sent
3 an email at 9:00 a.m. saying we assume you don't want to go
4 along with us on this and then they file their motion at
5 10:00. They need to do a little bit more than that.

6 MS. ZIMMERMAN: Oh. Certainly. As that's been an
7 issue, I will reach out and remind people of that.

8 It has come to my attention a few times lately
9 after the fact that counsel from both Minneapolis and
10 elsewhere are calling your chambers with questions, and so
11 we're trying to streamline that and at least have one point
12 person so as to minimize traffic on your end. So whatever
13 we can do to be helpful we're happy to do.

14 THE COURT: Okay. That would be great. Thank
15 you.

16 Along those lines, having nothing to do
17 specifically with this case, but it came up in some other
18 matter: Apparently, when you file a letter on ECF, you get
19 this practice tip or filing tip that says you don't do that
20 without calling for permission, and so we get a lot of calls
21 from people saying can I file a letter. In fact, that's
22 neither the local rule nor my practice pointer. That
23 message is generated by the AO out in D.C. At one point, I
24 think I told you guys to do a certain thing, I don't
25 remember what it was, but just for your future edification,

1 if you file a letter, unless it's a letter requesting
2 reconsideration, you don't need permission to file it on
3 ECF, so you can blow through that stop sign. Okay?

4 MS. ZIMMERMAN: All right.

5 THE COURT: All right. So then the last thing on
6 my agenda, which is really your agenda -- and I brought
7 copies in case you don't have them -- is I wanted to go
8 through the categorization order and see what questions we
9 have and what we need to deal with.

10 The most important thing, from my perspective, was
11 just this last form on getting you to agree what the
12 disagreement is about the statute of limitations. This last
13 form, it would apply to those states where the defendant
14 believes there is no discovery rule, but the plaintiffs say
15 that there is either a discovery rule or something akin to
16 it. And I just want to have a list of those so that we can
17 track them. But, you know, you don't have to -- I don't see
18 that as a lot of -- you know, that there's a lot of meeting
19 and conferring to do on this. You agree to disagree and
20 reflect that on the document. So that was my only comment.

21 Mr. Hulse, you submitted a bunch of questions. Do
22 you want to go down your list or how do you want to do it?

23 MR. HULSE: And I defer to Ms. Lewis on our
24 bucketizing point.

25 MS. LEWIS: Your Honor, before I start going

1 through the list of things we wanted clarified, can I just
2 confirm on the record the particular states that will go on
3 your list, because we added -- defendants added a state to
4 the statute-of-limitations list and that was the State of
5 Michigan.

6 So, just briefly, there are 12 states: Alabama,
7 Delaware, Idaho, Kansas, Maine, Michigan, Nebraska, New
8 York, North Carolina, North Dakota, South Dakota, and
9 Virginia. And these were the states that were submitted to
10 the Court when we sent that list of limitations information.
11 So I just wanted to make sure that on the list Michigan was
12 stated in the record and will be a part of that list.

13 Also, with respect to this same chart, this is not
14 an issue that I put on the list of clarification, but if I
15 may bring it up. Your chart has, at least for the discovery
16 rule: Does the state have a discovery rule? The question
17 with the parties in the data that we previously submitted
18 was -- there were, I think, three states where both parties
19 agreed there was no discovery rule, and we'll reflect that
20 data in the chart. But it seems like the hang-up had to do
21 with those states in which plaintiffs cited a case that was
22 based on a toxic tort-type matter -- asbestos, benzene --
23 and we're wondering if this could be clarified or tweaked
24 somewhat so that maybe the question could be: Does the
25 state have a discovery rule for non-toxic tort cases?

1 THE COURT: Yeah, I understand your point. You
2 would say in those -- the defense would say in those
3 circumstances no. The plaintiffs are answering a slightly
4 different question, I think, which is we believe that those
5 cases relating it to toxic torts apply or should apply to
6 this kind of case.

7 So I guess what we need to accomplish, I think, is
8 some clarity in that. Maybe we should add a column for a
9 comment or something for each side. If I use a simple chart
10 and you answer it one way and they answer a different
11 question the other way, we'll end up confounding ourselves.

12 MS. LEWIS: Correct. The cases that plaintiffs
13 cited to us that is in the chart that we submitted to the
14 Court, those are the cases on which plaintiffs rely. And
15 all those cases are either asbestos or benzene or some toxic
16 tort case, except for one case in New York which was an
17 AIDS/HIV. Some of the states it's actually within the
18 statute itself.

19 So we agree that there should be some way to
20 clarify is there any authority that plaintiffs have for a
21 non-toxic tort case, because for all those states that are
22 listed if all they could find are asbestos-type toxic tort
23 cases, then that's where the discovery rule would not apply
24 in this case, because Bair Hugger with an infection is
25 nowhere near a toxic tort-type case.

1 THE COURT: I understand what you're saying. I
2 think what we're trying to get to is -- I don't want to
3 short the argument -- if the plaintiffs say, yeah, we admit
4 that this precedent is only related to toxic tort, but we
5 want the right to argue that it would be by logic applying
6 here, I think they have the right to do that.

7 So I think the most we can accomplish with the
8 chart is sort of laying out the battle lines. Then we have,
9 long time down the road maybe, a question of whether those
10 disputes about whether there's a discovery rule or not,
11 maybe those get resolved on a statewide basis.

12 So if the plaintiffs say no, Alabama does have a
13 discovery rule, the defendants say no, it could be that
14 there is some efficient way of resolving that issue sort of
15 statewide so that it either applies a discovery rule or it
16 doesn't to all of those cases.

17 So how do you think -- I should hear from
18 Ms. Zimmerman as well, but how do you want to modify this so
19 that we can track it and understand? Your argument is a
20 fair one; there's a discovery rule, but not for these kind
21 of cases. They'll say otherwise. But how do you want to
22 track it?

23 MS. LEWIS: I don't know if we continue to do
24 separate submissions as we've done before. If that's the
25 case, we've already submitted that data in which plaintiffs

1 on their column put the cases in which they relied on. And
2 in defendants' column we've cited either the statute or the
3 cases that said there is no discovery rule and the exception
4 to the no-discovery rule is in toxic tort-type cases.

5 So I'm thinking that if we just answered simple
6 yes or no, there's not going to be an agreement.

7 THE COURT: Right.

8 MS. LEWIS: It seems like the only solution is to
9 continue separate submissions.

10 THE COURT: Well, and I'm not intending that
11 you're going to agree on this chart. So, for example, let's
12 just fill in the first line: State is Alabama. Statute of
13 limitations period is two years let's say. Does the state
14 have a discovery rule? Plaintiffs would put a "P" in the
15 "yes" column. Defendants would put a "D" in the "no"
16 column.

17 So I wasn't intending that you guys are going to
18 agree on this. Maybe I'm overthinking this. Maybe what we
19 ought to do is -- I have the information from you. I can
20 fill this out and circulate it to the parties and you can
21 just say, yeah, this reflects what our state of the
22 knowledge is.

23 MS. LEWIS: We'd be happy to do that if that would
24 be okay with Your Honor, for plaintiff to put a "P" in the
25 column in which they say yes or no.

1 THE COURT: And then let's make a -- we'll add a
2 seventh column for comments so that we understand where the
3 dispute lies.

4 MR. HULSE: Maybe we should agree to just be
5 limited in the comments, too, so that it doesn't turn into a
6 take-home essay and then each side can put a sentence either
7 way, just so we can remember what the dispute was about.

8 THE COURT: Right. That's all we're trying to do,
9 is get a placeholder here. Can you all do that?

10 MS. ZIMMERMAN: Yes, I think we can, Your Honor.
11 I appreciate the Court's observation that we could do
12 something as simple as putting a "P" or "D" into the columns
13 instead of a check mark. I think that's probably
14 accomplishing what we're trying to do here.

15 It was our understanding from our last meeting
16 that the kind of full briefing, to the extent we ever get to
17 that, is going to be down the road a ways. Certainly I'm
18 sure defendants would not concede that they have submitted
19 all the arguments they intend to make to Your Honor, and
20 likewise we would certainly expect that it would be more
21 robust briefing. To the extent that the purpose of this
22 exercise is just to understand more about the universe of
23 cases -- where they come from, what we think may be
24 happening -- I certainly think we can do that with the chart
25 you prepared.

1 THE COURT: Okay. And I think if there are --
2 defendants mentioned that there are three states where the
3 parties are in agreement, and if that's the case, then we
4 revert back to what we had previously tried to categorize.
5 In those cases where there is clearly no discovery rule, use
6 the prior categorization. And I guess I had forgotten that
7 there were three states where the parties agreed on that.

8 MS. LEWIS: Very good. With respect to --

9 THE COURT: By the way, can you make sure your
10 microphone is on.

11 MS. LEWIS: It is, but I will speak louder.

12 THE COURT: Debra is not complaining, so I think
13 we're probably okay.

14 MS. LEWIS: Let me ask this question before I get
15 off of the discovery rule: For those three states where the
16 parties agree, after we fill out this chart, shall we go
17 ahead and start the timetable or the time ticking for when
18 we submit to plaintiffs and plaintiffs respond back?

19 THE COURT: Yes.

20 MS. LEWIS: Okay. For the fraudulent concealment,
21 which was an issue at the last hearing, your chart says,
22 "Does the state recognize fraudulent concealment?" And we
23 gave our position last time, Your Honor, on how we just
24 thought that was not sufficient information maybe. We had
25 another maybe suggestion to the Court either to have another

1 column or something to maybe point out an essential element
2 or two. For example, for any state that recognizes the
3 doctrine of fraudulent concealment if reliance is a
4 requirement to establish, could we maybe have a column that
5 says: Is reliance an element that must be established?

6 THE COURT: I'm going to answer that by not
7 answering it. Remind me in the three states that don't have
8 a discovery rule was there an allegation of fraudulent
9 concealment? In other words, is that a doctrine that's
10 recognized in those three states?

11 MS. LEWIS: I believe so.

12 MS. ZIMMERMAN: Yeah.

13 MR. HULSE: I would say Alabama -- you know, we
14 had our briefing in the 12(c) motion, which led to the
15 dismissal.

16 THE COURT: Right.

17 MR. HULSE: And that was a state where there's no
18 discovery rule. Plaintiffs argued fraudulent concealment.
19 We came back and argued that under Alabama law the plaintiff
20 actually has to rely on an affirmative misrepresentation by
21 the defendant.

22 THE COURT: Right.

23 MR. HULSE: And that's the element that under the
24 pleadings couldn't be met. So that's why Ms. Lewis is
25 bringing this up, is it's a fighting issue we see in

1 fraudulent concealment, is whether there is that reliance
2 element required.

3 THE COURT: Right. Yeah, I remember now.

4 MS. LEWIS: We're just wondering if we could have
5 an extra column that says: Is reliance an element to be
6 established? And you could say yes or no.

7 THE COURT: Let me ask you this: I remember
8 reading *Partlow*. Is there from the defense perspective some
9 additional fighting issues beyond reliance in that
10 circumstance? In other words, what this is now reminding me
11 is that I think I had given up the idea that we could
12 efficiently categorize the cases in such a way to dispose of
13 some and definitively rule some in on the basis of the
14 statute of limitations. And this is reminding me that even
15 in those states where there wasn't a discovery rule there
16 was still a fraudulent concealment issue.

17 MR. HULSE: Right.

18 THE COURT: Okay.

19 MR. HULSE: What we're trying to do maybe is see
20 if we can salvage at least a little bit of a path for a
21 subset of cases toward potential disposition and cases that
22 would, basically, have the same -- they are either Alabama
23 cases or cases that had a similar legal regime to Alabama.
24 It would identify those cases or for motion practice allow
25 *Partlow*. But if we're not looking to accomplish any of that

1 statute of limitations as you proposed, that's a different
2 issue.

3 THE COURT: I think -- go ahead, Ms. Zimmerman.

4 MS. ZIMMERMAN: The problem, first of all, I think
5 the Court knows, respectfully, we think *Partlow* was decided
6 wrongly.

7 THE COURT: Right.

8 MS. ZIMMERMAN: Additionally, with *Partlow* we had
9 depositions of the treaters, of people from the hospital
10 about what they had heard from 3M. So to the extent that
11 3M's argument is plaintiffs must establish reliance, it is
12 not something that we are going to be able to dispose of all
13 Alabama cases on without discovery.

14 So I understand respectfully that they want to
15 bounce all of Alabama. We can't do that without the
16 discovery that these people are entitled to take, which they
17 are presently estopped from taking.

18 MR. HULSE: Well, *Partlow* was decided on a motion
19 for judgment on the pleadings. It wasn't based on the
20 discovery record. So it's certainly true we had discovery
21 at that point.

22 MS. LEWIS: But we also have information, Your
23 Honor, from the plaintiff fact sheets that would answer that
24 question.

25 THE COURT: Okay. Well, here's what I think we

1 should do: I am certainly not going to decide today that
2 there's any of these cases that can be disposed of without
3 individualized briefing or discovery. I'm not going to
4 decide that.

5 I think if you want to -- my knowledge of
6 fraudulent concealment doctrine is spotty. If there are a
7 standard list of elements -- reliance, something,
8 something -- I am fine with you defining on this chart what
9 elements are required in that particular state. But don't
10 get your hopes up that somehow this is going to allow for
11 statewide dismissals or category dismissals, because I think
12 it's likely to be pretty plaintiff specific. But
13 information will help us, I think.

14 MS. ZIMMERMAN: And so then would it be -- if we
15 add the column for comments that Ms. Lewis requested, are we
16 going to be then limited -- Mr. Hulse requested it be a
17 limited submission. Right? We're going to do a sentence or
18 two about reliance?

19 MS. LEWIS: I mean, we can just --

20 THE COURT: I don't actually want you to argue
21 whether there's reliance or not in an individual case. You
22 can identify the elements -- reliance, you know, material
23 omission, whatever the --

24 MS. LEWIS: Affirmative act.

25 THE COURT: -- plain vanilla elements are.

1 MR. HULSE: Reliance and affirmative
2 misrepresentation, those are the two we would include.

3 THE COURT: Right. Okay. And, you know, there
4 again make the columns -- if you want to revise this chart,
5 that's fine. I think we have to -- what I had tried to do
6 with these columns were have both a "yes" and a "no" so that
7 if the parties agree on it, it's a check mark. I don't
8 think I communicated this particularly well, so I'm sorry.
9 If the parties disagree, you put "plaintiff" or "defendant"
10 in your column so that we can see where the fighting issues
11 are.

12 MS. LEWIS: Sure.

13 THE COURT: So is that sufficient guidance,
14 Ms. Lewis, or not?

15 MS. LEWIS: On that chart, yes, sir.

16 THE COURT: Pardon me?

17 MS. LEWIS: For the chart, yes.

18 THE COURT: Okay. So will you then -- let's do it
19 this way: You revise this particular chart but circulate it
20 to the plaintiffs and to the Court. No funny stuff. All
21 right?

22 MS. LEWIS: Not at all, Your Honor.

23 THE COURT: All right. Does that take care of the
24 statute of limitations?

25 MS. LEWIS: Let's see. I believe so. I'm looking

1 down the list of items we submitted to the Court Friday for
2 clarification, and I think that answers Question 5, which
3 was -- no, I'm sorry -- yeah, it does, which had to do with
4 -- I think it answers maybe 5 and 6, which 6 was for the
5 chart how the parties are to submit the information.

6 And the due date will be -- will it be 30 days
7 from the last order? So that would be June 17th?

8 THE COURT: Well, let's get the form -- 30 days
9 from the finalization of the form of the chart.

10 MS. LEWIS: Okay. Very good.

11 MS. ZIMMERMAN: I'm happy to jump ahead and report
12 that we circulated, essentially, a master spreadsheet for
13 folks to fill out across the country on all these cases
14 quite awhile back. And I think at this point there are at
15 least 40 firms that have submitted even the proof of use and
16 statute stuff. And it comprises several thousand cases so
17 far. And my information from this morning is that bucket
18 one is looking to be somewhere around 55, 60 cases. That's
19 the non-use one. And, as the Court expected, the rest of
20 them are falling into the other categories. Obviously, not
21 everybody has completed the task yet, but folks have been
22 submitting their information to Ms. Lewis and to myself, and
23 I think that we should be able to get all of the information
24 in in a timely manner. Hopefully, we can continue to press
25 forward on this.

1 THE COURT: Okay. That's great. My intention
2 with respect to the things that weren't affected by the most
3 recent changes is that we keep that deadline. But, again, I
4 recognize I introduced an ambiguity on that.

5 MS. ZIMMERMAN: I think we can work with that. I
6 think counsel will be -- so just to give the Court a little
7 background on how we've been doing this, we provided a
8 spreadsheet to everybody and some basic instructions and
9 Your Honor's order. And just as everybody has filled out
10 plaintiff fact sheets across the country for their
11 individual plaintiffs, they have filled out their own
12 spreadsheets. Ms. Lewis and counsel for defendants, they
13 would prefer that there be one uniform submission, I gather
14 prepared by myself or plaintiffs' lead counsel, but they
15 have been getting individual spreadsheets from everybody as
16 they get individual fact sheets from everybody.

17 I know a number of people on kind of my side of
18 the view would think that it's reasonable that one at a time
19 these spreadsheets come in. I'm happy to work with defense
20 counsel to prepare a single spreadsheet so that we can all
21 be operating from the same kind of playbook as it was,
22 because I think that that's going to be more helpful for
23 both parties and the Court as we look at this.

24 THE COURT: I do agree with that.

25 MS. ZIMMERMAN: But I do think that we should have

1 most of the information hopefully pretty quickly. We have
2 not suggested to people they have extra time. We thought
3 that might persuade them to get their information in
4 promptly.

5 We will provide a response on the statute of
6 repose. I believe that was due tomorrow. We will exchange
7 that information with you by then. And then we'll finish up
8 the statute-of-limitations information on those buckets
9 hopefully in the next couple of weeks.

10 MR. HULSE: And, Your Honor, from our perspective,
11 if some additional time I think for the plaintiffs if
12 they're going to collate this information from the various
13 firms that we would be fine with it. That's been our key
14 concern, is we're getting, you know, hundreds of different
15 spreadsheets on different days. Some seems consistent with
16 the order. Others there are quality control issues with.
17 We would look to plaintiffs' counsel to gather them, ensure
18 that they're compliant with the Court's order, and then get
19 them to us uniformly. I think that's going to save us a lot
20 of time versus having to piece through hundreds of different
21 spreadsheets.

22 MS. ZIMMERMAN: So the one piece to that that I
23 guess from the lead counsel's position is that we are not in
24 a position to verify everybody's -- I mean, I can gather
25 them. They are sending me copies of their proof-of-use

1 documents and what's in a spreadsheet, but, frankly, the
2 idea of going through 5,500 cases and checking to see if
3 their math is right, that's too big of a project.

4 MS. LEWIS: And we're not asking plaintiffs to
5 verify certainly, but we just want to be able to look at a
6 chart to say here are all the possible cases so that we can
7 say which ones are missing.

8 THE COURT: Right.

9 MS. LEWIS: Which ones have not submitted any
10 information. So we were hoping maybe just a chart that
11 lists all the plaintiffs' names in alpha order.

12 MS. ZIMMERMAN: You can sort them any way you
13 want.

14 MR. HULSE: We understand what they're offering
15 here, this would come together in the three spreadsheets.
16 The reason we raise this is not ever expecting leadership
17 that they would verify, go down into the medical records and
18 so forth. But, for example, there are some firms that are
19 confused between two and three, buckets two and three. This
20 stuff is bound to happen. It would probably save time if
21 they catch it, rather than us engaging in meet and confers
22 with --

23 MS. LEWIS: 140 some firms. 147 law firms.

24 MR. HULSE: Right.

25 THE COURT: Okay. I'm not hearing a violent

1 disagreement between you. I agree, first of all, there is
2 no sense in which the Court is expecting the plaintiffs or
3 the leadership to verify the information.

4 MS. ZIMMERMAN: We appreciate that.

5 THE COURT: Yeah. But I do think it probably
6 falls on your shoulders to collate the information into a
7 proper form.

8 MS. ZIMMERMAN: Yep. Happy to do that. What we
9 did is really one spreadsheet with multiple tabs. So each
10 firm has all of their cases and there's a bucket one, and a
11 bucket two, and a bucket three. And it may well be that
12 people have not filled it out the way we suggested, but
13 we'll work on getting that.

14 THE COURT: Will they be sortable so that it can
15 be -- like alphabetical?

16 MS. ZIMMERMAN: Yeah. Absolutely. You should be
17 able to sort by -- we've even asked that they do the latency
18 and injury stuff at the front-end, because if they are going
19 through all their files at once, maybe not a big deal if
20 somebody represents four plaintiffs. There are some firms
21 that represent a thousand, so it's a bigger project.

22 THE COURT: Right. That's a big deal, yeah.

23 MS. ZIMMERMAN: But, yeah, we're happy to help
24 coordinate that.

25 MR. HULSE: I do think we need to make sure we're

1 -- I think we're in agreement, but that we're in agreement
2 on the same thing. What plaintiffs have done -- and this is
3 good to a degree -- is created a template that they have
4 then sent out to the 100 plus plaintiffs' firms. However,
5 they have been sending us individual sets of spreadsheets.
6 That is for us what we think is not working and why this has
7 gone a bit off the rails.

8 What we're looking for is, again, for the
9 plaintiffs to collate that information into a single set of
10 spreadsheets that will cover as best as possible the
11 entirety of the MDL.

12 THE COURT: Right. I think they're going to do
13 that. Yeah. But I also hear them saying we've sent you
14 those so that you can see where things are going.

15 MS. ZIMMERMAN: Right. Right now you have a
16 jumpstart. At least 39 of the firms have sent the
17 information to you. And if you want to read it, you can
18 read it. If you don't want to read it --

19 MR. HULSE: And it is helpful to us to the degree
20 we can see what some of the recurring issues are.

21 THE COURT: Right.

22 MR. HULSE: But we just want to be clear that it's
23 not plaintiffs' expectation that the clock -- our 60-day
24 clock is running from each of those individual emails that
25 we're getting from plaintiffs' counsel, that our 60-day

1 clock is going to run from receipt of the collated
2 spreadsheet.

3 THE COURT: Right. And, look, I put some
4 aggressive deadlines in here. I recognize that you're
5 herding a lot of cats and a few other animals as well. But,
6 yes, your time period runs from when the plaintiff completes
7 their side of it. Just as theirs runs from when you
8 complete your side of it.

9 MS. LEWIS: Right.

10 THE COURT: And so but what I'm hearing from --
11 and this is more a matter of just curiosity than anything --
12 so far we're looking at about two percent of the cases fall
13 into that category of don't have any information on product
14 ID?

15 MS. ZIMMERMAN: That's the information I have this
16 morning. So it's certainly possible somebody will come in
17 with a huge batch of cases and they will say I never had any
18 proof, but so far what we're seeing is it's really a very
19 small number of people.

20 I'm glad to see that there are cases ending up in
21 that because it means that people are reading the
22 instructions. And I'm answering a lot of emails and telling
23 people, look, if you don't have proof, you better put it in
24 bucket one.

25 THE COURT: Right.

1 MS. ZIMMERMAN: But it is certainly a very small
2 minority, which is what we expected to see.

3 THE COURT: Okay. Well, that's interesting.
4 Thank you.

5 All right. Next.

6 MS. LEWIS: Your Honor, with respect to what we
7 are receiving, we are starting to look at what we're
8 getting, and we did have a question for plaintiffs' counsel;
9 we didn't hear back from them. But their instructions, I
10 believe, to plaintiffs' counsel was to put dates of Bair
11 Hugger exposure. Your order says "relevant surgery." We
12 understand "relevant surgery" to mean the index surgery. So
13 we just wanted clarification on what does date of Bair
14 Hugger exposure mean.

15 THE COURT: Well, I would assume the same thing,
16 yeah, index surgeries.

17 MS. LEWIS: We just wanted a clarification on it
18 so that when we go through there, we can use that date to
19 compare to our information.

20 THE COURT: Right. Okay. Well, and that may be,
21 frankly, a better way of phrasing it, frankly.

22 MS. LEWIS: Well, actually, if plaintiffs have
23 sometimes -- if they rely on the revision surgery, then that
24 would not be accurate, and that would be something different
25 from what you were expecting.

1 THE COURT: Right.

2 MS. LEWIS: And that's why we wanted clarity that
3 that date should be the index surgery and not just any date
4 of Bair Hugger exposure because, again, some of the patient
5 plaintiffs may have multiple surgeries.

6 THE COURT: Yeah. I think --

7 MS. LEWIS: So that clears up --

8 MS. ZIMMERMAN: We understood it to be the time
9 that they would have been exposed to Bair Hugger that would
10 cause a problem. I suspect a lot of these people ended up
11 with Bair Hugger on them again during the revision surgery.

12 MS. LEWIS: They may have. But if they're
13 alleging that it's the first surgery, that's the date we
14 wanted.

15 THE COURT: It's the operative -- bad word -- it's
16 the triggering exposure.

17 MR. HULSE: The reason we were wondering if there
18 was full clarity on the plaintiffs' side is that we've been
19 getting submissions where the proof of Bair Hugger use is in
20 the revision surgery. So the PFS has told us that it's the
21 original surgery, the index surgery, where the Bair Hugger
22 was used and they got the infection. But then when we get
23 proof of Bair Hugger use, it's for some later surgery. So
24 that's why we wondered if there was full clarity among all
25 plaintiffs' counsel on this.

1 THE COURT: Well, that issue will sort of kind of
2 come out in the process of when you respond to some of their
3 categorization, I think that will make that clear.

4 MR. HULSE: Yep. We agree.

5 MS. ZIMMERMAN: We agree.

6 THE COURT: Okay. Next.

7 MS. LEWIS: One other issue with respect to -- so
8 it's number five on the list that we submitted to the Court
9 on Friday, and this has to do with your new buckets; three,
10 four, and five.

11 THE COURT: Correct.

12 MS. LEWIS: Is this just still to be for the
13 states that are already at issue that will go on your chart
14 or all 50 states?

15 THE COURT: I want to double-check this, but my
16 recollection was, yeah, this was intended to be -- sorry --
17 all 50.

18 MS. LEWIS: All 50?

19 THE COURT: Yeah. So that once we sort of
20 realized that there was nothing much that could be done or
21 that it would be difficult to do anything with the statute
22 of limitations the thought was, well, we can find out how
23 far out the cases are. Some are real close, some are sort
24 of in the mid range, and some are way beyond that. And that
25 may or may not be relevant at some point either to dismissal

1 or settlement or whatever. So it was all 50.

2 MS. LEWIS: All right. Shall we have a meet and
3 confer or maybe submit a list to plaintiffs, which we can
4 do, for statute of limitations for all 50 states? Because
5 so far we've only met and conferred on the 12 that were
6 previously. So what we could do is create a chart for all
7 50, submit it to plaintiffs, get their agreement that this
8 is what the statute says so that we would at least agree on
9 what the relevant limitations period is?

10 THE COURT: I would hope that would be possible,
11 yes.

12 MS. ZIMMERMAN: I'm happy to meet and confer with
13 you on anything. I guess I was thinking the 12 states you
14 were talking about were really limited to the statute of
15 repose issue.

16 MS. LEWIS: No. There are 13 statute of repose
17 states. We have talked about repose, and then there are 12
18 --

19 THE COURT: And then there are 12 statute of
20 limitations states where they believe there is no discovery
21 rule.

22 MS. LEWIS: Or discovery of injury, which we are
23 seeing is pretty close to the end dates of surgery. So
24 these are the 12 states that I've read off in the record.

25 What I'm saying is if now buckets three, four, and

1 five are to be for all 50 states -- I mean, we can do that,
2 but I don't want there to be a subsequent issue afterwards,
3 after we do all that work, where plaintiffs disagree on the
4 limitation period. So I'm thinking maybe just on the
5 front-end we can generate a list for all 50 states, use
6 limitations period, get plaintiffs to confirm yes, those
7 dates are correct, you know, for whatever state, for Texas,
8 if it's two years.

9 THE COURT: Yeah, and that's one where I would
10 hope, naively, that the parties can agree on what the
11 statute of limitations is. But I'm already presupposing
12 you're going to disagree on -- or you agree that there's a
13 discovery rule so we know it's going to be fact-specific
14 inquiry such that there's no point trying to sort the cases
15 other than just sort of this very gross close, mid range,
16 far away.

17 MS. LEWIS: This list I'm proposing would be just
18 to make sure that everybody agrees on the limitations period
19 so that we can go ahead and start our process for buckets
20 three, four, and five.

21 THE COURT: Right. Right. I, for one, cannot
22 possibly anticipate every issue that you guys will raise. I
23 won't be able to do it. I would like to think that what the
24 statute of limitations period is is going to be by and large
25 not disputed, but I guess we'll see.

1 MS. ZIMMERMAN: I think that's right. I mean,
2 we're lawyers so, of course, we flyspeck your language and
3 we parse it.

4 THE COURT: Right. We reserve the right to
5 disagree.

6 MS. ZIMMERMAN: We do. This has come up a couple
7 of times. I would suggest that it may be useful to us to
8 have -- I hate to add another column at the end of the
9 comments, but just say did someone file and ask for
10 Minnesota law, because that matters for purposes of
11 choice-of-law issues. It's going to be down the road that
12 we end up briefing it, but there may be -- so, like,
13 *Partlow*, for example, she filed it here. She said that
14 Minnesota law should apply. I appreciate she lost that
15 issue, but she's different than maybe an Alabama person and
16 said Alabama law should apply right out of the gate. It may
17 just be a helpful piece of information if the plaintiff puts
18 in an asterisk or something to say which state they filed
19 the case in or which state they claimed on their short form.

20 MS. LEWIS: That would be down the road in
21 plaintiffs' response to buckets three, four, and five if
22 there's --

23 THE COURT: I think that's right, that it's
24 probably something that gets added by the plaintiffs.

25 MS. ZIMMERMAN: We would be happy to do so.

1 MS. LEWIS: Okay. So with respect to -- I'm sorry
2 I'm jumping around here, Your Honor -- for plaintiffs'
3 product ID buckets, we didn't really talk about how much
4 time we are okay with for plaintiffs to pull together and
5 collate all the data.

6 Ms. Zimmerman, how much time do you think you
7 might need, how much extra time?

8 MS. ZIMMERMAN: So we used the -- I mean, we
9 instructed everybody that they needed to get their stuff in
10 really, frankly, by the end of this week; I guess by
11 tomorrow. I don't know that we'll have all of that. They
12 have all seen the order come out since, the May 17th order,
13 saying we're resetting the deadlines. We have a lot of
14 people saying does that mean it's 60 days from then. We've
15 said continue to operate like it's due tomorrow.

16 THE COURT: Right.

17 MS. ZIMMERMAN: I think probably what we ought to
18 do is say that it needs to be due by, say, June 17th. We'll
19 be in a position to report to the Court then at the June
20 20th status conference, which I think is still presently
21 scheduled, about where we're at, that we've at least handed
22 off -- you guys will have the information for a couple of
23 days.

24 MS. LEWIS: So by June 17th you will have the
25 coalesced three charts?

1 MS. ZIMMERMAN: We should.

2 MS. LEWIS: Fine.

3 THE COURT: Okay. Yeah, that makes sense to me.
4 I think that's good.

5 MS. LEWIS: Okay.

6 THE COURT: What else? So in answer to the reset
7 of the clock, the short answer is it only reset the
8 statute-of-limitations statute -- it's really just the
9 statute of limitations, but it can be the statute of repose
10 as well, but not everything else.

11 MS. ZIMMERMAN: We can get the statute of repose.
12 That's a much shorter thing. There were 65, 80 cases that
13 they challenged, so it's not as big of a project.

14 THE COURT: Okay. Good.

15 MS. LEWIS: Your Honor, one other point of
16 clarification at least let me get into the record, and that
17 is in your May 17th order for repose you still listed
18 states, but the parties had agreed that two states should be
19 removed.

20 THE COURT: Right.

21 MS. LEWIS: Kentucky and Oregon.

22 THE COURT: Yep.

23 MS. LEWIS: And I believe the parties agreed, at
24 least in theory, Connecticut, Kansas, and Wisconsin should
25 be included.

1 THE COURT: Yeah, I think that's -- and I should
2 have caught that update, but that should be updated.

3 MS. LEWIS: Okay. And I don't know if we can
4 figure this out today, but the last --

5 THE COURT: Number 8?

6 MS. LEWIS: -- item number 8 on what do we do if
7 we don't get any response, maybe now that plaintiffs have
8 until June 17th that might fix some of the issues. But for
9 maybe plaintiffs' firms that don't respond at all by June
10 17th what do we do with those cases?

11 THE COURT: It's a fair question. I'm not going
12 to decide that today. I think we'll cross that bridge if we
13 get to it. But I think -- Ms. Zimmerman, I think the thing
14 that the plaintiffs' counsel need to hear is that they are
15 playing with fire.

16 MS. ZIMMERMAN: Oh, absolutely. I mean, I assume
17 we can do a show cause order or something like that at the
18 appropriate time.

19 But if you want to work with me and get me a list
20 of people you think haven't gotten the information you
21 need -- I mean, you should have the stuff by the 17th, but
22 --

23 But I don't think we need to decide it today.

24 THE COURT: I think that would be good.

25 Obviously, that's something that clearly I'll have to confer

1 with Judge Ericksen about, as well. But let's tee that up.

2 If by the time June 20th rolls around there are
3 some stragglers out there, maybe submit ahead of time some
4 joint agenda and let me know what's out there.

5 MS. ZIMMERMAN: Sure. We should. So we have --
6 the hearing on the motion for reconsideration has now been
7 reset. It's June 12th, I think, in the morning.

8 THE COURT: Okay. Yeah. I was going to ask about
9 that. So it's been fully briefed. The questions have been
10 responded to?

11 MS. ZIMMERMAN: Yes.

12 THE COURT: Okay.

13 MS. ZIMMERMAN: And I think we provided copies of
14 our response papers to our chambers, too.

15 THE COURT: You did I know.

16 Did you?

17 MR. HULSE: We have not. Would you like us to?

18 THE COURT: Oh, heck, I might even read it. I'm
19 interested, yeah. So, yes, that would be great.

20 MR. HULSE: We will do that.

21 THE COURT: Has Judge Ericksen, I doubt it, but
22 has she indicated anything about when she thinks she will
23 get an order out on that motion?

24 MS. ZIMMERMAN: Not to plaintiffs, Your Honor.

25 MR. HULSE: Nor us.

1 THE COURT: I assumed that the answer was the same
2 to both.

3 MR. HULSE: There is no special line of
4 communication with Judge Ericksen.

5 THE COURT: All right. Well, good.
6 Anything else that we should be talking about
7 today?

8 MR. HULSE: I think that covered what we submitted
9 on Friday.

10 MS. LEWIS: I think that's it.

11 MS. ZIMMERMAN: From the plaintiffs' perspective
12 it might be useful if we -- obviously, we have the hearing
13 on the 12th of June with Judge Ericksen and then the status
14 conference on the 20th of June, and perhaps it would be
15 helpful to submit an agenda of discovery items and whether
16 we do it in a formal status conference or something slightly
17 less formal kind of like this to talk about where we might
18 be headed for this case. Obviously, I don't know how long
19 Judge Ericksen is going to need to make the decision on the
20 motion for reconsideration. It's my best guess that the
21 couple of cases that are headed to the Eighth Circuit right
22 now are likely not going to be argued until September.
23 Briefing won't be fully submitted, I think, until next week.

24 So just that we're all in a position to kind of
25 get off the blocks, if we're getting off the blocks, quickly

1 one thing that we would suggest is a discovery conference
2 with an agenda we propose together, kind of mindful of the
3 CLE that Your Honor provided in December. Maybe, maybe we
4 could get on the calendar for Your Honor to hear a couple of
5 cases. I know that sometimes the Article III judges their
6 calendars get filled up a lot faster. So if we could get
7 going again this fall with trial, I'm glad to do that with
8 Judge Ericksen or happy to consent to a trial before Your
9 Honor. We would consent to a couple of two-week long trials
10 and do it on the clock and get moving. But we're eager to
11 try a case.

12 THE COURT: Okay. You'll have to discuss that
13 with the defendants.

14 As far as the discovery issues go, I think it
15 would be smart to submit something in advance of June 20th
16 as well. So any discovery stuff that we can deal with, that
17 would be wise.

18 I know we have been holding onto or not deciding,
19 right, substitutions -- the suggestions of death and
20 substitutions because I believe some of the cases have
21 outstanding motions to dismiss as well. And, honestly, I
22 don't know -- we've been holding them here on the thought
23 that if we were to do something like grant the substitution
24 and Judge Ericksen were to dismiss the case, that would seem
25 awkward. So we've been holding onto them, and I think we're

1 going to continue to hold onto them until we know what's
2 going to go on upstairs.

3 Is that right, Austin?

4 THE LAW CLERK: The reverse is the more awkward
5 situation. Right?

6 THE COURT: Yeah, where we deny the substitution
7 and --

8 MR. HULSE: And that makes sense to us, Your
9 Honor.

10 The one thing that has popped up that I'm sure
11 you've seen is there is one firm that has been filing
12 motions for leave to file suggestions of death. And we've
13 had a debate with them about it. Our point of view is it's
14 completely unnecessary to do. But what they're looking for
15 the Court to do is grant leave to file suggestions of death
16 as a sort of a determination of their compliance with
17 Pretrial Order No. 23. That would sort of, in our view,
18 short-circuit the whole motion-to-dismiss regime that Judge
19 Ericksen has put in place. So there are probably four or
20 five of these out there at this point.

21 So what we keep advising them is just file your
22 suggestion of death and if we think -- and if it's not
23 timely, we'll move to dismiss. There is no reason that Your
24 Honor should have to be ruling on these. And it's really
25 just in one firm, but it's created now this steady stream of

1 briefing on a side issue.

2 So what we would love -- and maybe a bit of an
3 advisory opinion if possible -- is for the Court to advise
4 that this is not necessary. If a plaintiff wants to file a
5 suggestion of death, they should go ahead and file a
6 suggestion of death, and then whether that affects them
7 under PTO 23 is dealt with under the motion-to-dismiss
8 process that's laid out in PTO 23.

9 THE COURT: I have not tripped to this issue. You
10 have.

11 THE LAW CLERK: It was discussed.

12 THE COURT: Okay. Which firm, if I might ask?

13 MR. HULSE: Kennedy Hodges.

14 THE COURT: Okay. I haven't looked at it, but it
15 strikes me as there is no good reason to file a request to
16 file a suggestion of death.

17 MS. ZIMMERMAN: I didn't even know it was
18 happening, so -- they're required to bring a notice of
19 suggestion of death upon record, and I believe Judge
20 Ericksen's order is it's pretty quickly after the death,
21 sometimes --

22 THE COURT: Like 60 days, right?

23 THE LAW CLERK: Ninety.

24 MR. HULSE: And so these are cases where
25 they're --

1 THE COURT: Out of time.

2 MR. HULSE: We notified them that their client is
3 dead.

4 THE COURT: Right.

5 MR. HULSE: They then go -- instead of just doing
6 what every other firm does, which is just simply file a
7 suggestion of death at that point, they file a motion for
8 leave to file a suggestion-of-death notice -- or not notice,
9 before your Honor. And so we just don't think that's
10 necessary for them to do.

11 THE COURT: Well, it's just another way of getting
12 the dismissal heard and accepting the burden of proof on
13 their shoulders. Why would they do that?

14 MR. HULSE: Right. Yeah, I think they're looking
15 for Your Honor to rule on these, rather than Judge Ericksen.

16 THE COURT: Oh, okay.

17 MS. ZIMMERMAN: Well, respectfully, I take
18 exception to that. I think it's not reasonable to assume
19 that there's some sort of effort to get out from one judge
20 and in front of another, because any decision you make is
21 going to go up to the other judge as well.

22 MR. HULSE: I purely meant on a procedural basis.

23 THE COURT: Right. Here's what we should do, I
24 think, with those: Ms. Zimmerman, why don't you tell the
25 folks at Kennedy Hodges that they should just file

1 suggestions of death.

2 MS. ZIMMERMAN: I will.

3 THE COURT: And give them a special dispensation.

4 On the ones that they've already filed a request to file a
5 suggestion of death, if they file it by the end of next
6 week, which I believe is June 7th, then it will relate back
7 to the filing of the request to file a suggestion of death.

8 MS. ZIMMERMAN: Okay.

9 THE COURT: Make sense?

10 MR. HULSE: It does.

11 MS. ZIMMERMAN: It does. I know that there is
12 also a case -- there's a Langdon Emison firm in Missouri --
13 they have a case that was filed in state court naming a
14 number of sales reps. 3M removed it. The motion for -- and
15 then the plaintiff briefed a remand. It was not decided
16 quickly enough. 3M, essentially, tagged the case to the
17 JPML. JPML said, Hey, you know, if the federal district
18 court in Kansas or Missouri, I'm not sure which it is,
19 wanted the case or wanted to remand it, they could have done
20 it already. I think that the whole thing happened in about
21 three weeks. So we're sending it to the MDL here. The
22 Langdon Emison firm thinks it's an improper removal and they
23 want to have it remanded. There is a motion that has either
24 been briefed and filed or it's on the verge of being briefed
25 and filed.

1 I've encouraged them to try to time any kind of
2 hearings with the scheduled status conferences hoping that
3 that would be of assistance to the Court. If you have a
4 different approach you prefer, either you or Judge Ericksen,
5 we would be happy to facilitate communication.

6 THE COURT: So they're going to file this motion
7 in this district, I assume?

8 MS. ZIMMERMAN: Correct, Your Honor. So,
9 essentially, yeah, they were in state court, a number of the
10 sales representatives. I believe a hospital was also named
11 in part because of some of the discovery answers that
12 they've received in the MDL. 3M removed it and at the same
13 time noticed the JPML that this case should be part of the
14 MDL in Minnesota, so please transfer it. The JPML did in
15 fact do that, and it all took place in less than a month or
16 so.

17 So they have a motion to remand pending in
18 whatever the federal court is in Missouri, and they are now
19 going to bring it here. I assume you'd prefer it on the
20 same days you already have scheduled for Bair Hugger
21 matters, but if you don't care --

22 THE COURT: Here's what I would say: Different
23 Article III judges seem to have a different approach to
24 questions of remand. Some of them seem to view them as
25 dispositive, others don't, or they refer them anyway.

1 So I would file it and request a hearing date in
2 the ordinary course or request your hearing date and then
3 file it, however that's typically done --

4 MS. ZIMMERMAN: Right.

5 THE COURT: -- assuming Judge Ericksen will hear
6 it. But then she may or may not refer it to me or she may
7 deem that it's non-dispositive.

8 MS. ZIMMERMAN: Okay.

9 THE COURT: And then if that's the case, then that
10 will be made obvious to the firm and then we can work out a
11 hearing date.

12 I'm all for doing these things efficiently. So if
13 we can do it at June 20th or whenever, that's fine with me,
14 if it's mine to hear.

15 MR. HULSE: And just to move that along a little
16 bit, so I actually spoke to plaintiffs' counsel, Langdon
17 Emison, on Friday to advise them of exactly that. I said I
18 wasn't sure Judge Ericksen considered it dispositive or
19 non-dispositive. My experience is that the courtroom
20 deputies usually know and would be able to advise her in
21 terms of scheduling a hearing.

22 THE COURT: Yeah. Yep. Nope, that's all good.
23 Anything else?

24 MS. LEWIS: Your Honor, yes.

25 THE COURT: Yep. Go ahead.

1 MS. LEWIS: Sorry. Each week we get filings, you
2 know, from Bair Hugger. Each week 50 percent or more are
3 barred by limitation based on the data that we have from the
4 pleadings. Because of that we're going to have on a rolling
5 basis cases that need to be added now to the
6 statute-of-limitations charts, maybe even the
7 statutes-of-repose charts.

8 THE COURT: Right.

9 MS. LEWIS: We are thinking that maybe we will do
10 this on a quarterly basis. And we don't rely on the
11 pleading. We rely on the PFS since that's the document
12 under oath for those dates.

13 So just to alert the Court that unless the Court
14 advises us otherwise, we were planning maybe every quarter
15 take a look to see what additional cases need to be placed
16 on the requisite bucket spreadsheets and submit those to
17 plaintiffs.

18 THE COURT: In the ordinary course when do you get
19 the plaintiff fact sheets relative to when you get the case?

20 MS. LEWIS: Ninety days.

21 THE COURT: So it would be about a six-month lag
22 is what you're proposing?

23 MS. LEWIS: Right.

24 THE COURT: I think that's fine. Yeah, do it in
25 the quarter -- now you can live in the administrative AO

1 hell that we judges live in.

2 If it is filed, do it in the first full quarter
3 after you get the PFS.

4 MS. LEWIS: Right.

5 THE COURT: Okay? Make sense?

6 MS. LEWIS: Yes.

7 THE COURT: Okay. Good, now you can track your
8 own six-month rules.

9 All right. Anything else? And I think that also
10 -- here's what I would say would be prudent for the
11 plaintiffs on product ID as cases come in, resolve that
12 bucketizing as soon as possible as well, but in no event
13 later than the same sort of full quarter after the PFS.

14 MS. ZIMMERMAN: Right. Absolutely.

15 THE COURT: Okay. Then I think we're done.

16 Thank you for your accommodation today. It turned
17 out to have been unnecessary. I was here at 11:00. But I
18 appreciate the flexibility.

19 MR. HULSE: And thank the Court for accommodation
20 on setting today as the hearing date versus the original
21 deadline. We appreciate having that little bit of extra --
22 the original hearing date, which came close after our
23 briefing deadline. So we appreciate that.

24 MS. ZIMMERMAN: It's been a year this month.

25 THE COURT: I aim to be user-friendly. All right.

1 Thanks, everyone. We're in recess.

2 THE LAW CLERK: All rise.

3 (Court adjourned at 12:39 p.m.)

4 * * *

5 I, Debra Beauvais, certify that the foregoing is a
6 correct transcript from the record of proceedings in the
7 above-entitled matter.

8 Certified by: s/Debra Beauvais
9 Debra Beauvais, RPR-CRR

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